

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

| | | |
|---|---|--------------------------------|
| PATIENT CARE ASSOCIATES LLC a/s/o |) | |
| R.D., |) | |
| |) | |
| Plaintiff, |) | |
| |) | Civil Action No. 2:13-cv-02904 |
| v. |) | |
| |) | Hon. Stanley R. Chesler |
| PROCTER & GAMBLE CO.; ABC CORP. |) | |
| (1-10) (Said names being fictitious and |) | Oral Argument Requested |
| unknown entities), |) | |
| |) | |
| Defendants. |) | |

MOTION TO DISMISS COMPLAINT

PLEASE TAKE NOTICE that on June 17, 2013 at 10:00 a.m. or as soon thereafter as counsel may be heard, the undersigned counsel for Defendant, The Procter & Gamble Company (incorrectly named in the caption), moves pursuant to Rule 12 (b)(6), Fed. R. Civ. P., to dismiss the plaintiff's complaint on the ground that does not state a claim upon which relief can be granted.

As to Counts 1 and 2, defendant was the employer and plan sponsor of the healthcare plan on which plaintiff's claims are based, but it was not and is not the Plan Administrator of the healthcare plan, had and has no duties associated with reviewing or deciding claims for benefits under that Plan and exercised no discretion in connection with making a determination of the claims asserted in the Complaint. It is not, therefore, a proper defendant in this case, which asserts claims for benefits under ERISA Section 502 (a)(1)(B), 29 U.S.C. § 1132 (a)(1)(B), and for breach of fiduciary duty under an unspecified section of ERISA.

As to Count III, plaintiff's state law claim of negligent misrepresentation is preempted by Section 514 (a) of ERISA. 29 U.S.C. § 1144 (a).

The duly authenticated The Procter & Gamble Healthcare Plan, which is the Plan on which the claim in the Complaint is based, is attached to this Motion as Exhibit A.

WHEREFORE, defendant prays that its Motion be granted and that the Complaint as to it be dismissed.

Respectfully submitted,

/s/ Jill R. Cohen

Jill R. Cohen

Eckert Seamans Cherin & Mellott LLC

50 West State Street, Suite 1400

P.O. Box 1298

Trenton, NJ 08607-1298

(609) 392-2100

John J. Myers

Eckert Seamans Cherin & Mellott LLC

600 Grant Street, 44th Floor

Pittsburgh, PA 15219

(412) 566-5900